

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
Plaintiff-Appellee.

v.

No. 95-7907

ALBERTA ELAINE WHITE,  
Defendant-Appellant.

Appeal from the United States District Court  
for the District of South Carolina, at Rock Hill.  
Dennis W. Shedd, District Judge.  
(CR-89-214, CA-93-2722-0-19-BC)

Submitted: May 14, 1996

Decided: June 14, 1996

Before WILKINS and WILLIAMS, Circuit Judges, and PHILLIPS,  
Senior Circuit Judge.

---

Affirmed in part, vacated in part, and remanded by unpublished per  
curiam opinion.

---

**COUNSEL**

Alberta Elaine White, Appellant Pro Se. Alfred William Walker  
Bethea, Assistant United States Attorney, Florence, South Carolina,  
for Appellee.

---

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

---

## OPINION

### PER CURIAM:

Alberta Elaine White appeals from the district court's order denying her 28 U.S.C. § 2255 (1988) motion. We find that the district court properly dismissed each of White's claims that it addressed. However, because we find that material issues of fact exist as to whether White received effective assistance of counsel regarding her appeal, a claim overlooked by the district court, we grant a certificate of appealability, affirm the court's order in part, vacate the order in part, and remand for further proceedings.

White pled guilty to conspiracy to possess with intent to distribute and to distribute cocaine. She then sought relief under § 2255 raising numerous claims. The Government responded and moved for summary judgment but did not file any affidavits in support of its motion. The district court granted summary judgment and dismissed White's motion, without addressing White's claim that her counsel failed to perfect her appeal. White timely appealed.

We find that, viewing the record in the light most favorable to White, a material dispute exists regarding White's claim that her counsel failed to file a notice of appeal. White alleged, in her verified petition, that her counsel did not file a notice of appeal after she requested that one be filed. White's assertions are unopposed. The Government focused its motion for summary judgment on other issues and did not file an affidavit from White's trial counsel.

White's uncontradicted assertions, if true, would entitle White to relief in the form of a belated appeal. United States v. Peak, 992 F.2d 39, 42 (4th Cir. 1993). We therefore vacate the portion of the order of the district court granting summary judgment to the Government on White's claim of ineffective assistance of counsel for failing to file a requested notice of appeal. We remand to the district court for the limited purpose of addressing this claim.

We affirm the remainder of the order on the reasoning of the district court. United States v. White, Nos. CR-89-214; CA-93-2722-0-19-BC (D.S.C. Oct. 18, 1995). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED